



Comptroller General
of the United States

Washington, D.C. 20548

P. JORDAN

145657

Decision

Matter of: Crash Rescue Equipment Service, Inc.

File: B-245653

Date: January 16, 1992

Robert G. Relyea, for the protester,
John R. McCaw, Esq., Federal Aviation Administration,
Department of Transportation, for the agency.
Paul E. Jordan, Esq., and Paul I. Lieberman, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Agency properly rejected low bid as nonresponsive, where it contained material deficiencies, and allowed second low bidder to correct an immaterial deficiency in its bid which had a negligible impact with respect to the cost of the items to be supplied.

DECISION

Crash Rescue Equipment Service, Inc. (CRESI) protests the award of a contract under invitation for bids (IFB) No. DTFA03-91-B-0015, issued by the Federal Aviation Administration (FAA), Department of Transportation, for supply of a rapid intervention fire-fighting vehicle equipped with specified apparatus. CRESI contends that its bid was improperly rejected as nonresponsive.

We deny the protest.

The fire-fighting vehicle specified in this IFB is to be used for research into the needs and degree of protection required for general aviation airports and heliports. Additional apparatus, listed as separate line items and incorporated into the vehicle, will provide the ability to proportion and test new fire-suppression agents. The statement of work (SOW) set forth the vehicle and apparatus specifications and incorporated National Fire Protection Agency and FAA requirements for vehicles of this type. The IFB required each bidder to complete a detailed questionnaire listing the specifications of its vehicle and additional apparatus. The IFB also provided that failure to complete the questionnaire would result in rejection of the

bid as nonresponsive. The IFB required the submission of descriptive literature for any "equal" apparatus items bid in lieu of the specified brand name items. Award was to be made on an all-or-none basis. Two companies, CRESI and Emergency One, Inc., submitted bids by the June 13, 1991, bid opening date. CRESI was the low bidder.

In reviewing the bid submitted by CRESI, the contracting officer found it nonresponsive for several reasons. First, CRESI's questionnaire indicated it intended to furnish an aluminum chassis frame instead of the specified steel frame. Second, for a line item where CRESI indicated that it was offering a brand name item, in the lines provided for the product bid, CRESI also inserted the different name of its vehicle and did not submit any descriptive literature. Third, CRESI's questionnaire responses did not indicate which brand of chassis or engine it would use. Fourth, CRESI's computer-aided drawings of its vehicle did not include front and back views as required by the IFB. CRESI also stated in its bid cover letter "as a point of reference" that certain "not separately priced" items totaled approximately \$35,000 and the contracting officer was unsure whether this was intended to be added to the total bid.¹

The contracting officer found Emergency One's bid responsive and awarded it the contract on August 2. Upon receiving notice of the award, CRESI filed a protest with the agency, which the agency denied on September 5. CRESI then filed a protest with our Office. The agency has stayed performance of the contract pending this decision.

The protester contends that the items it bid were responsive to the IFB and that it could easily have answered the agency's concerns had it been offered the opportunity. For example, with regard to the brand name item, CRESI explains that, as clearly indicated in its questionnaire, it intended to furnish the brand name item but mistakenly inserted the brand name of its entire vehicle in the space provided on the bid schedule. CRESI also challenges the responsiveness of Emergency One's bid.

The agency responds that it properly rejected CRESI's bid as nonresponsive and accepted Emergency One's bid. The agency also argues that CRESI is not an interested party to protest since it did not submit a responsive bid. See Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1991).

¹We note that even if this amount were added to CRESI's bid, Emergency One's bid would remain higher.

First, we disagree that CRESI is not an interested party. Since only two bids were received, we view CRESI as an interested party to challenge the responsiveness of Emergency One's bid because the appropriate remedy if its protest were sustained would be a resolicitation under which CRESI would compete. Dantec Elec., Inc., B-243580, July 17, 1991, 91-2 CPD ¶ 68.

We do agree with the agency that CRESI's bid was nonresponsive. A bid is responsive only if it unequivocally offers to provide the requested items in total conformance with the requirements specified in the IFB. Power Ten, Inc., B-236725, Nov. 18, 1989, 89-2 CPD ¶ 563. CRESI's failure to indicate which engine or frame it intended to furnish, as well as its apparent intention to supply an aluminum chassis, created sufficient ambiguities in the bid to prevent the contracting officer from properly evaluating the bid or concluding that it was an unequivocal offer to meet the specifications. Further, as the IFB specifically warned, failure to supply complete computer-assisted drawings was a sufficient ground to reject the bid as nonresponsive.

While CRESI argues that it could have resolved its apparent nonresponsiveness, the agency could not permit CRESI to explain its bid after bid opening. In general, the responsiveness of a bid must be ascertained from the bid documents themselves, not from clarifications provided by the bidder after bids have been opened and prices exposed. Marco Equip., Inc.; Scientific Supply Co., 70 Comp. Gen. 219 (1991), 91-1 CPD ¶ 107.

CRESI challenges the responsiveness of Emergency One's bid in various areas, based upon its competitor's failure to include complete information in its questionnaire. The agency, after reviewing Emergency One's bid, including technical data submitted with its bid, determined that "minor information" missing in Emergency One's questionnaire was covered in the additional submission. The only exception concerned Emergency One's apparent intent to supply a particular hose that was too short.

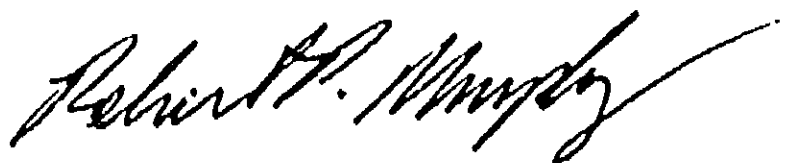
According to the specifications under "Hand Lines, Reels and Compartments," bidders were to furnish a reel carrying "150 feet . . . of twinned 1-inch rubber hose." In question 29 of the questionnaire, "Handlines," Emergency One indicated it would supply one 100-foot hose and one "dual agent" 150-foot hose for the specified reel. The contracting officer found this to be the "only deviation from the solicitation requirement," and determined that the hose length was not material. When he gave Emergency One

the opportunity to correct the apparent deviation, the company indicated that it intended to supply two 150-foot hoses as required.

Bidders are permitted to correct minor informalities or irregularities in bids so long as they are merely a matter of form and not of substance, or if they concern immaterial defects that can be waived or corrected without being prejudicial to other bidders. Federal Acquisition Regulation (FAR) § 14.405. A defect is immaterial when the effect on price, quantity, quality, or delivery is negligible when contrasted with the total cost of the supplies being acquired. Id.

First, it appears that Emergency One's bid of a "dual agent" hose, 150 feet in length, fully complies with the specification calling for a 150-foot "twinned" hose. Notwithstanding the contracting officer's concern in this regard, the 100-foot hose appears to be an extra hose, not a deviation. However, even if the intended provision of a 100-foot hose did constitute a deviation, we agree with the contracting officer that it is immaterial. CRESI has submitted no evidence, and we discern none in the record, which indicates that a single 1-inch diameter hose, 50 feet too short, has more than a negligible effect on the price, quality or delivery of the vehicle, bid at \$312,642. Thus, we conclude that the contracting officer properly allowed Emergency One to clarify its bid in this regard. See Astrophysics Research Corp., 66 Comp. Gen. 211 (1987), 87-1 CPD ¶ 65.

The protest is denied.


for James F. Hinchman
General Counsel